

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL AT DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 65/2012

1. Umesh Chandra Nodiyal, S/o Late Sri Tota Ram Nodiyal, presently posted as Assistant Engineer, Maintenance Division, Uttarakhand Jal Sansthan, Dehradun,
2. Dwarika Prasad Pokhriyal, S/o Late Sri Harikrishna Pokhriyal, Presently posted as Assistant Engineer, Maintenance Division, Uttarakhand Jal Sansthan, Dehradun.

.....Petitioners

VERSUS

1. State of Uttarakhand through its Principal Secretary, Drinking Water Department, Secretariat, Subhash Road, Dehradun,
2. Chief General Manager, Uttarakhand Jal Sansthan, Jal Bhawan, Nehru Colony, Dehradun,
3. Ajay Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Nainital,
4. Santosh Kumar Upadhyaya, Assistant Engineer, Uttarakhand Jal Sansthan, Pithuwala, Dehradun,
5. Govind Singh Negi, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun
6. Nand Kishore, Assistant Engineer, Uttarakhand Jal Sansthan, Almora

7. Surat Singh Kandari, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun
8. Narendra Singh Payal, Assistant Engineer, Uttarakhand Jal Sansthan, Chamoli
9. Sushil Kumar Saini, Assistant Engineer, Uttarakhand Jal Sansthan, Ranikhet
10. Manohar Lal Bijalwan, Assistant Engineer, Uttarakhand Jal Sansthan, Pauri Garhwal
11. Praveen Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Rudraprayag
12. Sanjay Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Srinagar (Pauri Garhwal)
13. Pramod Kumar Tyagi, Assistant Engineer, Uttarakhand Jal Sansthan, Hardwar
14. Manish Semwal, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun (North)
15. Madan Mohan Sharma, Assistant Engineer, Uttarakhand Jal Sansthan, Mussoorie
16. Rajendra Kumar Chauhan, Assistant Engineer, Uttarakhand Jal Sansthan, Hardwar
17. Sunil Tewari, Assistant Engineer, Uttarakhand Jal Sansthan, Ram Nagar, Nainital.

.....Respondents

Present: Sri Jugal Tiwari, Counsel
for the petitioners

Sri U.C.Dhaundiyal, A.P.O.
for the respondent no. 1

Sri B.B.Naithani, Counsel
for the respondents no. 2 & 3

Smt. Pragati Tiwari, Counsel
for the respondents no. 5, 7, 8, 10,13
and 16

Dr Aparna Singh, Counsel
for the petitioners no. 4,14 &17

JUDGMENT**DATE: APRIL 11, 2014****DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

1. Inter-se seniority amongst the promoted and direct recruited Assistant Engineers is under challenge in the present claim petition.

2. The facts as have been stated in the petition are that the petitioners joined the Garhwal Jal Sansthan as Junior Engineers on 01.11.1980 against the substantive posts. However, at that time, the service conditions were governed by executive instructions as there were no service rules. In the year 1997, the Centralized Service Rules were framed. Subsequently, U.P. Hill Regions sub-cadre was also created and petitioners were allocated the said cadre. Thereafter, a final seniority list pertaining to Junior Engineers serving in U.P. Hill Sub cadre was issued on 31.1.1996, which remained in force even after creation of State of Uttarakhand. The Centralized Service rules were adopted by the State of Uttarakhand also, but later on Uttarakhand Jal Sansthan Abhyantran Sewa Niyamawali, 2011 were framed, which were enforced on 2.12.2011. Under these rules, there were two sources for the recruitment of Assistant Engineers, one by promotion of junior engineers and other by direct recruitment. Both these sources have equal quota in the vacancies. Rule-26 of the above mentioned rules provides that inter-se seniority of Assistant Engineers shall be determined from the date of substantive appointment.

3. The petitioners were promoted to the post of Assistant Engineer on 11.3.2012, while 20 more Assistant

Engineers were recruited by direct recruitment on 3.06.2011 and 3 more were recruited on 15.7.2011. The provisional seniority list of Assistant Engineers from both sources of recruitment was issued and objections were invited. The petitioners filed objections. However, the objections of the petitioners were overruled and final seniority list was issued wherein the petitioners have been placed below the private respondents' no. 3 and 4, Sri Ajay Kumar and Sri Santosh Kumar. The facts that the petitioners were substantively appointed on 11.3.2011, while the private respondents Ajay Kumar was appointed on 15.7.2011 and Santosh Kumar on 3.6.2011 was ignored. The petitioners by way of amendment have also impleaded the private respondents no. 5 to 17. Therefore, the petitioners preferred this claim petition and prayed that the seniority list at Annexure-1 be quashed.

4. The petition has been opposed on behalf of respondents no. 1 and 2 only. Despite giving sufficient time, no written statement has been filed on behalf of private respondent no. 3 and 4. The written statement has been filed on behalf of the respondent no.2, which has been adopted by the respondent no. 1 also. It has been stated in this written statement that the petition has been filed on false and frivolous grounds by concealing the material facts. In fact, the controversy in the petition is regarding inter-se seniority of Assistant Engineers amongst the promotees and directly recruited in the same selection year i.e. 2010-11.

5. It has further been stated that after creation of the State, two bodies named as Garhwal Jal Sansthan and Kumoun Jal Sansthan were in existence and they were amalgamated in one body named as The Uttaranchal Jal Sansthan vide notification dated 26.8.2002. On 7.11.2002, a

new Corporation named as Uttaranchal Peyjal Sansthan Vikas and Nirman Nigam was constituted and Uttaranchal Jal Sansthan became part of it. Earlier the service conditions of the employees were governed by Uttaranchal Jal Sansthan Employees Service Conditions Rules, 2004, which was enforced on 26.8.2004. Later on, these rules were replaced by Uttarakhand Jal Sansthan Engineering Service Rules, 2011. After the enforcement of these rules, the Uttar Pradesh Palika Evam Jal Sansthan Abhiyantran (Kendriyat) Sewa Niyamawali, 1996 were superseded. It is further stated that the petitioners were promoted, while the private respondents no. 3 and 4 were appointed by direct recruitment to the post of Assistant Engineers for the selection year 2010-11. The inter-se seniority amongst the direct recruitment and promotees is to be governed by the Uttaranchal Govt. Servants Seniority Rules, 2002 and Uttarakhand Jal Sansthan Engineers Service Rules, 2011. It is further stated that the inter-se seniority of the promotees and directly recruited Assistant Engineers cannot be determined solely on the basis of date of substantive appointment. In fact, these rules provide that direct recruits and promotees shall be placed in a cyclic order, which is explained under rule 20 and 24 of the Rules of 2011. In case, the promotees are placed above the direct recruits, it will be not possible to maintain the prescribed quota of 50% in each source of recruitment. The petitioners have been rightly placed in the seniority list, which is drawn in accordance with the provisions of Rule 24(4) of the Rules of 2011 and the provisions contained in the Uttaranchal Govt. Servants Seniority Rules, 2002. There is no illegality or irregularity in fixation of seniority; therefore, petition is devoid of merit and liable to be dismissed.

6. The newly added respondents no. 5, 7, 8, 10, 13 and 16 have filed their written statement. They have supported the case of the petitioners. None of the other respondents have filed any written statement, neither contested the petition, though, the counsel has put in appearance on behalf of respondents no. 4, 14 and 17.

7. We have heard both the parties and perused the material available on record carefully. The facts as averred in the petition are admitted to both the parties. The petitioners and some of the private respondents no. 5, 7, 8, 10 and 13 and 16 had joined the service as Junior Engineers in year 1980 and were promoted on the post of Assistant Engineers on 11.3.2011. The private respondent no. 3, 4 and other respondents were recruited directly to the post of Assistant Engineer. The respondent no. 3 was recruited on 15.7.2011 and private respondent no. 4 was recruited on 3.6.2011.

8. First of all, it has been contended on behalf of the petitioners that the seniority cannot be determined on the basis of the Uttarakhand Jal Sansthan Engineering Service Rules, 2011, as has been done in the present case. In this contest, it is stated that before the enforcement of these rules, the service conditions of the petitioners were governed by the Uttar Pradesh Palika and Jal Sansthan Jalkal Abhiyantran (Centralized) Service Rules, 1996. It is further stated that the petitioners were promoted and the respondent no. 3 and 4 were directly recruited under the provisions of the abovementioned rules of 1996, and not under the Uttarakhand Jal Sansthan Engineering Service Rules, 2011. It is further contended that the Govt. cannot frame rules, which are not consistent with the earlier rules or which put

the petitioners in disadvantageous position. So first of all, we have to see as to whether the Centralized Service Rules of 1996 were applicable in the present case or not. In this regard, it is important to mention that initially the petitioners were appointed as Junior Engineers under the provisions of aforesaid Centralized Service rules of 1996 and even after the creation of the State of Uttarakhand, these rules were adopted, but in the year 2004, new service rules under the title 'Uttarakhand Jal Sansthan Employees Services Rules, 2004' were framed, which were enforced on 13.10.2004. After the enforcement of these rules, the service conditions of the parties were governed under these rules. Though, the petitioners were appointed under the provisions of Centralized Services Rules of 1996, but in 2004, after the enforcement of new rules, the service conditions of the parties were governed under the provisions of new Rules. These rules have never been challenged. So, now the petitioners cannot be permitted to contend that Govt. does not have any right to frame new rules. It is also not clear as to how the petitioners have been put in disadvantageous position. Therefore, we are not inclined to hold that Service conditions of the petitioners should always be governed under the provisions of Centralized Service Rules of 1996. It is the settled law that the State Govt. has right to re-frame or modify the existing rules and service conditions of the employees will have to be governed under the provisions of the rules framed by the Govt. from time to time. The Hon'ble Supreme Court in Union of India Vs. S.S. Uppal & others (1996) 2 SCC, 168 held that the seniority is to be governed under the existing rules and not under the rules under which initial appointments are made. Hon'ble Supreme Court in another case P.U. Joshi and others Vs. Accountant General,

Ahmedabad & others, 2003(2) Recent Services Judgments, 245 have clearly held that there is no right in the employee of the State to claim that rules governing conditions of service should be forever the same as the one when he entered in the service for all purposes. It has further been held that a govt. servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service rules. Thus, it becomes clear that the State Govt. has right to frame the rules and the State of Uttarakhand has exercised this right by framing the new rules in 2004. Therefore, we are of the considered view that after the enforcement of the 2004 rules, the service conditions of the parties were governed by these rules and not by the Centralized Services Rules, 1996. It is also important to mention that after the enforcement of Rules, 2004, the State Govt. has again framed separate rules for the Engineering Service in the department known as Jal Sansthan Engineering Service Rules, 2011 and these rules were enforced on December 02, 2011. At present, these rules are applicable, but the petitioners were promoted and the respondents no. 3 and 4 were recruited before the enforcement of these rules. At that time, the rules of 2004 were in existence, therefore, conditions of appointment and the seniority of the parties will be governed by the Rules of 2004.

9. The Rule-20 of Uttarakhand Jal Sansthan Employees Services Rules, 2004 provides the procedure of recruitment where there are more than one sources for recruitment. The abovementioned rules reads as under:

20. नियुक्ति-(1) मौलिक रिक्तियों के होने पर, नियुक्ति प्राधिकारी उत्तरांचल जल संस्थान सेवाओं में नियुक्तियां

विनियम 18 के अधीन तैयार की गयी सूची से, और विनियम 19 के उपबन्धों के अनुसार, पदोन्नति द्वारा करेगा।

परन्तु जहां किसी मामले में पदान्ति और सीधी भर्ती दोनों के द्वारा ही नियुक्ति की जानी हो ता उत्तरांचल जल संस्थान पदोन्नति और सीधी भर्ती वाले अभ्यर्थी को दोनों में से यथासंभव बारी-बारी से अभ्यर्थी को लेकर ऐसी रिक्तियों में नियुक्त करेगा। अभ्यर्थी उसी क्रम से लिये जायेंगे जिस क्रम से उनके नाम सूची में हो और पहला अभ्यर्थी पदोन्नत अभ्यर्थियों की सूची से लिया जायेगा।

(2) नियुक्ति प्राधिकारी ऐसी अस्थायी रिक्तियों में भी, जिनकी अवधि छः सप्ताह से अधिक हो, विनियम 19 के अधीन पदोन्नति के लिये चुने गये व्यक्तियों में से नियुक्तियां कर सकता है:

परन्तु यदि ऐसी नियुक्ति के लिये कोई अनुमोदित अभ्यर्थी उपलब्ध न हो तो नियुक्ति प्राधिकारी ऐसे अभ्यर्थी की नियुक्ति कर सकता है जो उत्तरांचल जल संस्थान सेवाओं में स्थायी तौर पर भर्ती के लिये इस विनियमावली के अधीन पात्र हो, इस उपबन्ध के अधीन सुसंगत नियमों के अन्तर्गत नियुक्तियां कर सकता है।

10. In the present case, the petitioners were promoted while the private respondents no. 3 and 4 were directly recruited therefore, they are governed by the above-mentioned rules as regards the appointment is concerned. In this regard, it has also been contended on behalf of the respondents that the promoted and directly recruited persons have been placed in the cyclic order as has been provided under the above mentioned rule. It is true that the respondents have placed the parties in the cyclic order. But in the present petition, the important question is as to whether placing the parties in cyclic order is justified or not. It is another important question as to whether it is justified to determine the parties only in accordance with the cyclic order. As regards the fixation of seniority is concerned, Rule 23 of the abovementioned rule provides that the seniority shall be determined in accordance

with the provisions of Uttarakhand Govt. Servants Seniority Rules, 2002. Thus, it becomes clear that the seniority of the parties should be determined in accordance with the provisions contained in the Uttaranchal Govt. Servants Seniority Rules, 2002. Apart from the Rule-23 as mentioned above, Rule-3 of Uttarakhand Govt. Servants Seniority Rules, 2002 is also important, which states that the provisions of these rules shall have the overriding effect of other rules. It means that whatever contained in Rules regarding the appointment, the seniority has to be determined strictly in accordance with the provisions contained in Uttaranchal Govt. Servants Seniority Rules, 2002.

11. It is admitted to both the parties that promotees as well as direct recruits have been appointed against the substantive posts. Consequently, Rule-8 of the Uttarakhand Govt. Servants Seniority Rules, 2002 is applicable regarding the determination of the seniority and it provides the procedure for determination of seniority. Rule-8 reads as under:-

“8. उस स्थिति में ज्येष्ठता जब नियुक्तियां, पदोन्नति और सीधी भर्ती से की जायं—

—(1) जहां सेवा नियमावली के अनुसार नियुक्तियां पदोन्नति और सीधी भर्ती दोनों प्रकार से की जानी हों, वहां इस प्रकार नियुक्त व्यक्तियों की ज्येष्ठता उनकी मौलिक नियुक्ति के आदेश के दिनांक से निम्नलिखित उपनियमों के उपबन्धों के अधीन अवधारित की जायेगी और यदि दो या अधिक व्यक्ति एक साथ नियुक्त किये जायं तो उस कम में अवधारित की जायेगी जिसमें उनके नाम नियुक्ति के आदेश में रखे गये हैं:

प्रतिबन्ध यह है कि यदि नियुक्ति के आदेश में कोई ऐसा विशिष्ट पूर्ववर्ती दिनांक विनिर्दिष्ट हो जिससे कोई व्यक्ति मौलिक रूप से नियुक्त किया जाय तो वह दिनांक मौलिक नियुक्ति के आदेश का दिनांक माना जायेगा और अन्य मामलों में इसका तात्पर्य आदेश जारी किये जाने के दिनांक से होगा:

अग्रेतर प्रतिबन्ध यह है कि सीधे भर्ती किया गया कोई अभ्यर्थी अपनी ज्येष्ठता खो सकता है, यदि किसी रिक्त पद का उसे प्रस्ताव किये जाने पर वह विधिमान्य कारणों के बिना, कार्यभार ग्रहण करने में विफल रहता है, कारणों की विधिमान्यता के संबंध में नियुक्ति प्राधिकारी का विनिश्चय अन्तिम होगा।

(2) किसी एक चयन के परिणामस्वरूप—

(क) सीधो भर्ती से नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी जैसी यथास्थिति आयोग या समिति द्वारा तैयार की गयी योग्यता सूची में दिखयी गयी हो

(ख) पदोन्नति द्वारा नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी जो इस स्थिति के अनुसार कि पदोन्नति एकल पोषक संवर्ग से या अनेक पोषक संवर्गों से होती है यथास्थिति, नियम 6 या नियम 7 में दिये गये सिद्धान्ता के अनुसार अवधारित की जाय।

(3) जहां किसी एक चयन के परिणामस्वरूप नियुक्तियां पदोन्नति और सीधी भर्ती दोनों प्रकार से की जायं, वहां पदोन्नत व्यक्तियों की, सीधे भर्ती किये गये व्यक्तियों के संबंध में ज्येष्ठता, जहां तक हो सके, दोनो स्रोतों के लिए विहित कोटा के अनुसार चकानुकम में (प्रथम स्थान पदोन्नत व्यक्ति का होगा) अवधारित की जायेगी।

दृष्टान्त—(1) जहां पदोन्नत व्यक्तियों और सीधी भर्ती किये गये व्यक्तियों का कोटा 1:1 के अनुपात में हो, वहां ज्येष्ठता निम्नलिखित क्रम में होगी:—

प्रथमपदोन्नत व्यक्ति
द्वितीयसीधी भर्ती किया गया व्यक्ति और इसी प्रकार आगे भी।

(2) जहां उक्त कोटा 1:3 के अनुपात में हो, वहां ज्येष्ठता निम्नलिखित क्रम में होगी:—

प्रथमपदोन्नत व्यक्ति
द्वितीय से चतुर्थ तक सीधे भर्ती किये गये व्यक्ति
पांचवां पदोन्नत व्यक्ति
छठा से आठवांसीधी भर्ती किये गये व्यक्ति और इसी प्रकार आगे भी।

प्रतिबन्ध यह है कि:

(एक) जहां किसी स्रोत से नियुक्तियां विहित कोटा से अधिक की जायं, वहां कोटा से अधिक नियुक्त व्यक्तियों को ज्येष्ठता के लिए उन अनुवर्ती वर्ष या वर्षों के लिए बढ़ा दिया जायेगा जिनमें कोटा के अनुसार रिक्तियां हों:

(दो) जहां किसी स्रोत से नियुक्तियां विहित कोटा से कम हों, और एसी न भरी गयी रिक्तियों के प्रति नियुक्तियां अनुवर्ती वर्ष या

वर्षों में की जाय, वहां इस प्रकार नियुक्त व्यक्ति किसी पूर्ववर्ती वर्ष की ज्येष्ठता नहीं पायेंगे किन्तु वह उस वर्ष की ज्येष्ठता पायेंगे जिसमें उनकी नियुक्तियां की जायं किन्तु उनके नाम शीर्ष पर रखे जायेंगे, जिसके बाद अन्य व्यक्तियों के नाम चकानुकम में रखे जायेंगे:

(तीन) जहां सेवा नियमावली के अनुसार, सुसंगत सेवा नियमावली में उल्लिखित परिस्थितियों में किसी स्रोत से बिना भरी गयी रिक्तियां अन्य स्रोत से भरी जायं और कोटा से अधिक नियुक्तियां की जायं, वहां इस प्रकार नियुक्त व्यक्ति उसी वर्ष की ज्येष्ठता पायेंगे मानो वे अपने कोटा की रिक्तियों के प्रति नियुक्त किये गये हों।”

12. Thus, in view of the above provisions, the seniority of the parties should be determined on the basis of their substantive appointment. Admittedly, the petitioners were appointed on substantive basis prior to the private respondents no. 3 and 4, therefore, the petitioners are entitled to be placed above the private respondents no. 3 and 4 in the seniority list. On behalf of the respondents, it has been contended that it is necessary to place the parties in the cyclic order as it has been provided in Rule 20 of Uttarakhand Jal Sansthan Employees Services Rules, 2004. In fact, the provision for placing the direct recruits and promotees in the cyclic order is meant for maintaining the percentage of the direct recruits and promotees in the matter of appointment only. However, the seniority is to be determined strictly in accordance with the provisions of Uttarakhand Govt. Servants Seniority Rules, 2002 and there can be no deviation from this rule. As regards the percentage of the direct recruits and promotees is concerned, it can also be maintained by placing the parties enblock. But in the present case, the seniority of the parties have been determined only on the basis of cyclic order, which cannot be upheld. Learned counsel for the respondents have drawn our attention towards the following cases:

- i. Arvinder Singh Bains Vs. State of Punjab & others, 2006(3) Recent Services Judgments, 390
- ii. H.V. Pardani vs Union of India & others, AIR 1985 Supreme Court, 781
- iii. Union of India & others Vs. N.R. Parmar and others, 2013 (136) FLR 134
- iv. State of Haryana and others vs. Vijay Singh & others, 2012(135) FLR, 191

13. We have carefully gone through the abovementioned cases carefully. In Arvinder Singh's case the Hon'ble Supreme Court has laid down that the rule of Rota and Quota must necessarily be reflected in the service rules. The same principle has been laid down in the case of H.V. Pardani and N.R. Parmar's case. There can be no dispute that 'Rota and Quota' should be maintained. But in the present case, despite maintaining quota, the question is as to which is the manner of placing the parties in the seniority. The quota means that sufficient employees are appointed so that their quota can be maintained, but it can never be meant that seniority should also be determined according to quota. The quota and the seniority have different aspects and meaning. With maintenance of quota, the seniority can also be determined and as we have said earlier, after placing the petitioners at right place in seniority, the directly appointed persons can be placed enblock for maintenance of that quota. In other words, it can be concluded that first of all the parties should be placed in accordance with their appointment on substantive posts and thereafter, the remainder parties can be placed enblock. By exercising this method, both the purpose will be solved i.e. Seniority of the parties will be maintained as well as the requirement of quota will also be fulfilled. But this procedure can be applied when the persons have been appointed on

different dates. If there are employees who have been appointed on one date, they can be placed in the cyclic order as per the rules mentioned above.

14. The impugned seniority list has been drawn under the provisions of Uttarakhand Jal Sansthan Abhiyantran Sewa Niyamawali, 2011. While at the time of entering into the cadre of Assistant engineers of the parties, the Rules of 2011 were not applicable. At that time, the service conditions of the parties were governed under the Uttarakhand Jal Sansthan Employees Services Rules, 2004 and Uttarakhand Govt. Servants Seniority Rules, 2002. Therefore, the determination of seniority under the 2011 Rules cannot be held justified.

15. Keeping in view of the above discussion, it becomes crystal clear that impugned seniority list has not been drawn properly and in accordance with relevant rules, consequently, the impugned seniority list is liable to be set aside.

ORDER

The claim petition is allowed. The impugned seniority list dated 04.07.2012 (Annexure A-1) is hereby set aside. The respondent no. 1 is directed to redraw the seniority list within a period three months from today in accordance with relevant rules. No order as to costs.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: APRIL 11, 2014
DEHRADUN

KNP